

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

15-cr-643 (PKC)

-against-

ORDER

GARY HIRST,

Defendant.

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CASTEL, U.S.D.J.

Defendant Gary Hirst now moves for the appointment of counsel to pursue a section 2255 motion. On November 15, 2018, he moved to have his judgment of conviction and sentence vacated, invoking Rule 60 of the Federal Rules of Civil Procedure. A criminal conviction may not be attacked or challenged by a Rule 60 motion, which is applicable only to civil actions. In its Order of November 21, 2018 (Doc 468), the Court noted that treating his Rule 60 motion as a motion under section 2255 was not without potential negative consequences to Mr. Hirst. A “second or successive motion” may not be considered by the Court unless it is first certified by a panel of the United States Court of Appeals. Mr. Hirst advised the Court that, in view of the foregoing, he wished to withdraw his motion under Rule 60 (Doc 469) and the motion was deemed withdrawn without prejudice (Doc 470).

Now he has moved this Court for the appointment of counsel to pursue section 2255 relief. His conviction was affirmed by the United States Court of Appeals for the Second Circuit on December 14, 2018 and the Court does not know whether he pursued a petition for a writ of certiorari or under what theory a section 2255 motion would be timely. Indeed, he does not hint at the basis for a section 2255 motion. If he wishes to file his earlier Rule 60 motion as a

section 2255 motion, he is and has been free to do so subject to the government's right to challenge the motion on timeliness grounds. Mr. Hirst seeks to have counsel appointed to file a section 2255 motion but does not reveal what the grounds for the section 2255 motion might be. Most section 2255 motions do not require the appointment of counsel unless and until an evidentiary hearing is required.

Mr. Hirst holds a medical degree from the University of Texas (San Antonio), a juris doctor from University of Miami and undergraduate degree with a major in computer science and mathematics. He is 67 years old and has a medical condition that could become incapacitating, although there is no indication that it has progressed to that state.

The application for the appointment of counsel is DENIED without prejudice. The application to seal the application for the appointment of counsel is granted.



P. Kevin Castel
United States District Judge

Dated: New York, New York
February 20, 2020

MAILED TO GARY HIRST, Reg No 72840 054, Federal Satellite Low, 2680 Highway 301 South, Jessup, GA 31599